

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LAWSON,

Defendant-Appellant.

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UNPUBLISHED  
February 15, 2005

No. 251331  
Wayne Circuit Court  
LC No. 01-000516-02

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of first-degree premeditated murder, MCL 750.316. The trial court sentenced him to life imprisonment. We affirm.

On appeal, defendant first challenges the trial court's denial of his motion for a new trial. Defendant argues that the admission at trial of a codefendant's<sup>1</sup> custodial statements to police violated defendant's right to confront the witnesses against him and was not harmless error. We disagree that reversal is warranted. We review a trial court's decision to deny a motion for a new trial for an abuse of discretion. *People v Ish*, 252 Mich App 115, 119; 652 NW2d 257 (2002). An abuse of discretion exists "when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made." *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001).

We agree with the trial court's ruling that defendant's rights were violated, but we conclude that the error was harmless.

Recently, in *Crawford v Washington*, 541 US 36; 124 S Ct 1354, 1374; 158 L Ed 2d 177 (2004), the United States Supreme Court held that testimonial out-of-court statements may not be admitted against a criminal defendant unless the declarant is unavailable and there has been a prior opportunity for the cross-examination of the declarant. See also *People v McPherson*, 263 Mich App 124, 132; 687 NW2d 370 (2004). While the Crawford Court "[left] for another day any effort to spell out a comprehensive definition of 'testimonial,'" *Crawford, supra*, 124 S Ct at

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<sup>1</sup> The codefendant was convicted at an earlier trial, during which the jury was unable to reach a verdict with regard to defendant.

1374, it also stated that “[s]tatements taken by police officers in the course of interrogations are . . . testimonial under even a narrow standard.” *Id.* at 1364.

In the instant case, while in custody, the codefendant voluntarily made statements to the police. The codefendant stated that he paid defendant \$250 to kill the victim, Eleanor Jones, and that, on the day of incident, defendant killed Jones in her house. The codefendant’s police statements regarding the murder were read into the record at trial. Given that the codefendant’s statements inculcating defendant were testimonial in nature and that the codefendant did not testify at trial, the use of the codefendant’s statements violated defendant’s constitutional rights and constitutes error. *Crawford, supra*, 124 S Ct at 1374.

A denial of the constitutional right of confrontation is subject to harmless-error analysis. *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998); *McPherson, supra*, 263 Mich App at 131. In reviewing a claim of preserved constitutional error, the beneficiary of the error, the prosecution herein, must prove that it is harmless beyond a reasonable doubt. *People v Reese*, 242 Mich App 626, 635; 619 NW2d 708 (2000); *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

We conclude the admission of the codefendant’s statements was harmless beyond a reasonable doubt. The evidence shows that defendant admitted to having committed the murder to two other inmates on separate occasions. Eric Davis, who was detained next to defendant’s jail cell, testified that defendant asked him to make a telephone call to defendant’s cousin, Larry Wilson, and convey defendant’s message to “get rid of the gun.” After the phone call, defendant told Davis that his “home boy,” whom he specifically referred to as the codefendant, had paid him \$250 to kill Jones. Another inmate, Tyrone Sanford, also testified that defendant told him that he was in jail for killing the codefendant’s mother and that the codefendant hired him to kill his mother for \$250. Defendant further told Sanford in detail about how the murder occurred, including how defendant went into Jones’ house and shot Jones in the back of the head. In light of the overwhelming evidence against defendant, the admission of the codefendant’s statements could not have prejudiced defendant. The trial court did not abuse its discretion in denying defendant’s motion for a new trial.<sup>2</sup>

Defendant’s second issue on appeal concerns a challenge to the trial court’s denial of his motion for a mistrial on the basis that the jury was exposed to an extrinsic influence. We disagree that this issue merits reversal. We review for an abuse of discretion a trial court’s decision to grant or deny a motion for a mistrial. *People v Nash*, 244 Mich App 93, 96; 625 NW2d 87 (2000). The test for determining whether extrinsic influences impacted a jury’s verdict

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<sup>2</sup> Defendant suggests that we cannot find the error harmless in this case because two earlier juries, when presented with largely the same evidence that we rely on here, were not able to reach a conclusion regarding defendant’s guilt. We reject this suggestion. Indeed, each jury stands as a separate fact-finding entity, and defendant’s reasoning is flawed. For example, to accept defendant’s reliance on the actions of earlier juries would mean that a defendant whose trial results in a hung jury could never be retried on the same evidence, because the hung jury result essentially would be demonstrative of insufficient evidence to convict.

to the extent that reversal is warranted requires proof that the jury was exposed to extrinsic influences and that these influences created a real and substantial possibility of having affected the jury's verdict. *People v Fletcher*, 260 Mich App 531, 540; 679 NW2d 127 (2004).

After approximately three hours of deliberations, a juror, identified only as “Tim,” walked out of the door of the courtroom and heard a young man in the hallway uttering “pow” as the juror walked by. Because the alleged incident occurred outside of the adversarial process, it may be characterized as an extrinsic influence. However, we conclude that defendant has failed to demonstrate that this extrinsic influence created a real and substantial possibility of affecting the jury's verdict. *Id.* Defendant’s argument is based on unsupported speculation that the alleged incident may have influenced the jury's decision. After the juror reported the incident, the court conducted a brief hearing. There was no evidence that anyone associated with the trial was involved in the alleged incident. After the judge alleviated Tim’s concern for safety by meeting in chambers with him and sharing this information, Tim thanked the judge and agreed to continue to sit on the jury. The court reinforced the atmosphere of safety by clearing the hallway any time the jury was temporarily excused from its duties. The jury returned a guilty verdict on defendant’s murder count, but not on his felony-firearm count. Under these circumstances, it is unlikely that the alleged incident had any real and substantial influence on the jury's verdict. In addition, the trial court instructed the jury at the beginning of trial, and at the close of proofs, to only consider the evidence properly presented during trial. Jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court properly denied defendant’s motion for a mistrial.

Defendant also argues, however, that he is at least entitled to an evidentiary hearing, with juror participation, on the matter of whether the jury was exposed to extrinsic influences. The trial court disagreed. A trial court's decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. *People v Mischley*, 164 Mich App 478, 481-482; 417 NW2d 537 (1987). We again find no abuse of discretion. Where there is evidence to suggest that the verdict was affected by external influences, juror testimony may be admitted to impeach the verdict. *Fletcher, supra*, 260 Mich App at 539. “[I]nvasions into the deliberative process should be limited to situations where there is evidence that influences external to the trial proceedings affected the verdict.” *Id.* at 540. As previously discussed, the record, including the record developed at the hearing at which defense counsel participated,<sup>3</sup> does not suggest that the verdict was affected by extrinsic influences. Because defendant’s request for an evidentiary hearing was based solely on unsupported speculation, the trial court did not abuse its discretion in denying the request for an evidentiary hearing.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Donald S. Owens

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<sup>3</sup> We note that defense counsel stated, “Yes, I agree,” when the trial court indicated that it would conduct an *in camera* interview with Tim.